# In the Supreme Court of the United States

OCTOBER TERM, 1966

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No. 1254

JOSEPH LAPI, PETITIONER

*v.*

UNITED STATES OF AMERICA

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No. 1470 Misc.

ANTHONY VERZINO, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

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After a non-jury trial in the United States District Court for the Southern District of New York, petitioners were convicted, with others, of narcotics offenses and conspiracy to commit such offenses. 254 F. Supp. 923. On June 17, 1966, petitioner Lapi was sentenced to concurrent terms of seven and one half



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years' imprisonment and petitioner Verzino to concurrent twelve year terms. The court of appeals affirmed, 370 F. 2d 751. The conviction of a co-defendant, Beigel, is before this Court on petition for certiorari in No. 1120, this Term.

The evidence is set forth in considerable detail in the opinions of the courts below. It showed that prior to March 21, 1963, federal narcotics agents and New York detectives, working together, had ample cause, on the basis of their surveillance over a period of several weeks, to believe that petitioner Verzino and others were involved in illicit narcotics traffic. On the night of March 21, petitioner Lapi was observed entering a Rambler car which Beigel had rented. Lapi drove the car by a circuitous route to 58th Street, off Sutton Place in Manhattan, and then proceeded on foot to the Cheer Club a few blocks away, where he was seen during the next few hours going in an out of the Club apparently looking for somebody. Soon after midnight, an automobile with two persons inside pulled up in front of the Club. Lapi spoke to the driver and, after receiving assurance that the other man in the car was "all right," entered the car. The car proceeded to 58th Street and Sutton Place near the parked Rambler. Lapi got out of the car, received a brown paper bag from the driver, and placed the bag inside the Rambler. He returned to the other vehicle which then drove away. A few hours later, Beigel entered the Rambler and drove it to his apartment house, where he was seen leaving the car carrying a brown paper bag. As he was about to enter his apartment, he was stopped at the threshold

by two city detectives who showed him a search warrant, arrested him, and seized the bag. Other federal and city officers arrived shortly thereafter. The bag was found to contain approximately two kilograms of heroin. The officers also searched the apartment, finding more heroin and narcotic cutting equipment (254 F. Supp. at 928).

1. Both petitioners rely upon the argument made by co-defendant Beigel in No. 1120 that the heroin found on Beigel's person at the time of his arrest should have been suppressed because the search warrant which the city detectives possessed at the time of Beigel's arrest was subsequently held invalid by a State court at a trial of Beigel alone. For the reasons set forth in our memorandum in opposition in No. 1120, the contention is without merit as to Beigel. It is clearly not available to petitioners who were not the persons against whom the search was directed, were not on the premises at the time of the arrest and seizure, did not challenge the introduction of the evidence below and had no standing to do so. *Wong Sun* v. *United States*, 371 U.S. 471, 491–492.

2. Petitioner Verzino contends that the delay of nearly two years between the offense and his indictment and subsequent arrest, including the fifteen month period following the filing of a complaint against several co-defendants in November 1963, deprived him of the right to a speedy trial. However, as the court below held, petitioner's "claim that the delay prejudiced his rights finds no support in the

record." 370 F. 2d at 756.[1] A showing of prejudice is necessary to make out a violation of the right to a speedy trial. *E.g., United States* v. *Banks,* 370 F. 2d 141 (C.A. 4), certiorari denied, April 10, 1967, No. 1275 Misc., this Term; see also *Pollard* v. *United States,* 352 U.S. 354, 361 (delay must be "purposeful or oppressive"). Moreover, by failing to raise the objection until all parties had rested at the trial (see 370 F. 2d at 757), petitioner waived his objection. *United States* v. *Sanchez,* 361 F. 2d 824 (C.A. 2). Petitioner's reliance upon *Ross* v. *United States,* 349 F. 2d 210 (C.A. D.C.), is misplaced. That case departed from the general rule that the applicable statute of limitations alone determines whether there has been an unwarranted delay in arrest (see, *e.g., United States* v. *Panczko,* 367 F. 2d 737 (C.A. 7), certiorari denied, 385 U.S. 1009), because it found substantial prejudice from the delay in that the proof at trial consisted only of the recollection of a single government witness and there was a "plausible claim of inability to recall or reconstruct the events of the day of the offense." *Ross* v. *United States,* 349 F. 2d at 215. No such dubiety surrounded the proof here (see 254 F. Supp. at 926–929).

3. Petitioner Verzino also suggests (Pet. 7) that the courts below applied an improper rule of law in

[1] Contrary to Verzino's contention, the delay clearly did not deprive him of the opportunity to move to suppress the evidence taken from Beigel, even assuming he had standing to do so. Rule 41(e) of the Federal Rules of Criminal Procedure provides that a motion to suppress "shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion * * *."

holding, on the present facts, that he was in "possession" of narcotics within the meaning of 21 U.S.C. 174. The district judge found that "Verzino fixed prices for narcotics, arranged for, and cooperated in arranging for, the receipt, sales and deliveries of the drugs, and had a working relationship with Beigel which enabled him to assure delivery of narcotics." 254 F. Supp. at 935. Such ability to control the movement and delivery of narcotics is sufficient to establish the requisite statutory possession. *United States* v. *Jones*, 308 F. 2d 26, 30–31 (C.A. 2); *United States* v. *Hernandez*, 290 F. 2d 86, 90 (C.A. 2).

4. Petitioner Lapi contends that the evidence against him was insufficient to support his conviction. The contention is without merit. As the court of appeals stated (370 F. 2d, at 756):

> The trial court's finding that Lapi, in furtherance of the conspiracy, drove the Rambler to 58th Street off Sutton Place and later placed in the car a brown paper bag which he knew contained heroin, is amply supported by the evidence and constitutes a sufficient basis for his conviction.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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